

JOHN WALTER, Esq; - [-] - - - - Appellant.

WILLIAM GLANVILLE, Esq; - [-] - - - - Respondent.

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The Respondent's CASE.

WILLIAM Elson, Esq; being seized of the Manor of *Selfea*, in the County of *Suffex*, and other Manors and Lands, by his Will devised the same to Trustees, upon Trust (*inter alia*) to raise 2500 l. for his Daughters *Bridget* and *Elizabeth*'s Portions, and afterwards to convey the same to his Son *William Elson*, and his Heirs, at his Age of 21 Years, and died, leaving his Estate very much incumbered, and in order to pay off the same, an Act of Parliament was obtained for Sale of the said Manor of *Selfea*; and some time after a Bill was exhibited in the Court of Chancery, by the Creditors of *William Elson* the Father, against *William Elson* the Son and others, to have the Manor of *Selfea* sold for the Payment of their Debts.

Mar. 1708. A Decree was made in that Cause, whereby (*inter alia*) a Sale was decreed to be made of the said Manor of *Selfea*, before *Henry Lovibond*, Esq; one of the Masters of the said Court, and the Money arising by such Sale was directed to be applied in Payment of the Debts of the said *William Elson* the Father.

The said Decree not being proceeded on for a considerable Time, and *Bridget* (one of the Daughters of *William Elson* the Father) being married to *Dr. Clerke*, and her Portion, as also her said Sister *Elizabeth*'s (now Wife of *Henry Kelsall*, Esq;) being charged upon the said Estate, *Dr. Clerke* and his Wife, and *Elizabeth* (then unmarried) exhibited their Bill in Chancery against the Trustees in the Will, and *William Elson* the Son, for Payment of their Portions and Interest; and upon hearing the said Cause, an Account was directed to be taken of what was due for their Portions and Interest, and that the same should be raised out of the Real Estate of *William Elson* the Father; and afterwards the Master made his Report, and certified due for Mrs. *Clerke*'s Portion and Interest 3085 l. 5 s.

July 1719. Articles were entered into between *William Elson* the Son, and the Appellant, whereby *William Elson* the Son covenanted before *Michaelmas*-Term then next, to convey to the Appellant and his Heirs the said Manor of *Selfea*, and the Appellant covenanted, after the perfecting the Conveyances to him, or whom he should appoint, to pay 10000 l. to *William Elson* the Son, or to such Person as should be legally intitled to receive the same.

Though this Estate was directed by the said Decree to be sold before a Master to the best Bidder, yet *William Elson* the Son, and the Appellant, privately entered into the said Articles; notwithstanding which, on the 30th of Dec. 1719. the Appellant bid 10000 l. for the said Estate, before the Master, on the Terms of his having the Rents and Profits thereof from *Michaelmas* 1719, to *Lady-Day* 1720.

21 March 1719. Before any Report made of the Appellant's being the best Bidder, he entered into an Agreement with *Thomas Stewart*, Esq; whereby Mr. *Stewart* was to pay the Appellant 1000 l. over and above the 10000 l. agreed to be paid by the Appellant to *William Elson* for the said Estate, and the Appellant was to transfer the supposed Benefit of his said Articles to Mr. *Stewart*; but the Appellant was to have the half Year's Rent and Profits of the Estate due at *Lady-Day*, 1720. which, by the Fall of a Life during that Time, came to about 500 l. more.

22 March 1719. The Appellant procured the Master's Report, allowing him the best Bidder for the said Estate, and thereupon he deposited 1000 l. with the Master, in Part of his Purchase-Money, and on the 29th of March, 1720. he paid the said 3085 l. 5 s. certified by the Master to be due to *Dr. Clerke* for his Wife's Portion, and took an Assignment thereof from them; but the said 1000 l. and 3085 l. 5 s. was Mr. *Stewart*'s Money.

The Respondent having afterwards agreed with the Appellant for the Purchase of the Premises, the Respondent repaid to Mr. *Stewart* the said 1000 l. Deposit, and 3085 l. 5 s. so paid by him in Part of the said Purchase as aforesaid. And also paid Mr. *Stewart* the further Sum of 1000 l. for his Bargain with the Appellant.

23 August 1720. At which time South-Sea Stock was about 900 l. per Cent. Articles were entered into between the Appellant, and Respondent, and *Stewart*, whereby the Appellant assigned to the Respondent the supposed Benefit of his said Articles, except the Rents and Profits arising from *Michaelmas* 1719, to *Lady-Day* 1720. the Benefit whereof was to be received by the Appellant. And it was agreed, that the Conveyance of the Premises agreed to be made by *William Elson* to the Appellant, should be made to the Respondent; and that as touching the 11000 l. Consideration-Money, 10000 l. of it should be deemed the Consideration-Money by the first Articles agreed to be paid by the Appellant to *William Elson*, and the remaining 1000 l. was agreed to be the Consideration-Money to be paid by the Respondent to the Appellant for the Assignment of his Articles, being the same Sum the Appellant was to have had of Mr. *Stewart*; and further taking Notice, that the Appellant had paid the said 1000 l. Deposit, and 3085 l. 5 s. to *Dr. Clerke*. It was agreed that the same were the proper Moneys of the Respondent, and to be taken as part of the 10000 l. And the Respondent covenanted, after the Conveyance made to him, to pay 5914 l. 15 s. residue of the said 10000 l. to *William Elson*, or such Person as should be intitled thereto, as the Court of Chancery should direct; and that the Respondent should also immediately pay the Appellant the further Sum of 1000 l. residue of the said 11000 l. And the Appellant thereby assigned to the Respondent the said 3085 l. 5 s. with the Assignment thereof, and also the Master's Report of the 22d of March 1719.

The Appellant having employed Mr. *Moody*, an Attorney, to view the said Estate, and do some other Business relating to the said Agreement; the Respondent also agreed to pay him 50 l. and gave the Appellant a Note promising to pay him the said 50 l. after the Conveyances perfected.

The Respondent afterwards discovered that the Estate did not come up to the Value given in to him, altho' he was to have paid for the same after the Rate of 40 Years Purchase.

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The Appellant brought his Bill against the Respondent and *William Elson*, to compel the Respondent to a specific Performance of the said Articles, and that the Appellant might be discharged from his said Bidding before the said Master, and the Respondent stand in his Place: to which Bill Answers were put in; but before the Cause was heard, the Appellant's Agent brought in one Page to offer before the Master, to take a Lease of the Estate as a Tenant for 21 Years, at 400 *l.* per Ann. Rent, and was allowed by the Master; Tenant accordingly; and after a long Prosecution sealed a Lease, but rather chose to abscond than perform it, and so the Estate was thrown on the Respondent, to his great Loss, it being now Lett for no more than 300 *l.* per Ann.

Miller Bar.
& al' Quer.
Elson & al'
Def.
2 Aug. 1722.
15 July 1723.

In this Cause, wherein the Appellant was reported the best Purchaser before the Master, an Order was obtained, whereby the Appellant was order'd to bring in the Remainder of his Purchase Money, being 5914 *l.* 15 *s.* which the Appellant paid to the Master the 23d of October following.

The said Cause against the Respondent coming to a Hearing before the late Lord Chancellor, it was (*inter alia*) decreed, That the said Contracts between the Appellant and the Respondent should be performed, and that the Respondent should indemnify the Appellant for the future, on account of the said Purchase against *William Elson* and his Trustees: And to that End it was referred to the Master to ascertain what the said Contracts were, and to see the same performed, and the Appellant indemnified accordingly; and that the Respondent should pay the Appellant the said 5914 *l.* 15 *s.* with Interest from the Time it was brought before the Master.

At this Hearing, the Master's Report, of allowing Page Tenant of the Estate at 400 *l.* per Ann. Rent, was made Use of as Evidence against the Respondent to raise the Value of the Estate.

That the Respondent soon after repaid the Appellant the said 5419 *l.* 15 *s.* with Interest; and on the 26th of August 1724. Conveyances were executed by Mr. *Elson* and the Appellant to the Respondent.

That there had formerly been great Dealings between the Appellant and Respondent, as is particularly mention'd in the Pleadings in the Appellant's Cause, and the Respondent had great Demands against the Appellant, which were not then released: And there were also other Disputes between the Appellant and Respondent, in relation to the said Purchase and Decree, and other Matters.

6 Aug. 1724.

A Meeting was had between them, and all Matters, Differences, and Demands of both Parties were consider'd, and their Securities and Papers produc'd; and at length they agreed to settle and adjust the same, and the Respondent was to pay the Appellant a great Sum of Money, far exceeding 1000 *l.* and both Sides were to deliver up all their Securities, Writings, Papers and Vouchers, and to execute to each other general and final Releases: And, pursuant to such Agreement, the Respondent paid the Appellant the Sum of Money agreed on between them, in full of all Demands against the Respondent, and the Securities, Vouchers and Papers on both Sides, were deliver'd up to be cancelled. And on the same 6th of August the Appellant and Respondent mutually executed Releases to each other, whereby the Appellant released to the Respondent, all Actions, Decrees, and Orders of Chancery, Cause and Causes of Action, Suits, Debts, Accounts, and Sums of Money, Damages and Demands whatsoever, both in Law or Equity, or otherwise howsoever, which against the said Respondent the Appellant ever had, or might have, for, or by Reason of any Matter or Thing whatsoever, from the Beginning of the World, unto the Day of the Date of the said Release.

1 Mar. 1724.

The said *William Elson* preferred his Petition to the late Lords Commissioners, thereby (*inter alia*) praying that the Appellant might pay Interest for the said 10000 *l.* Purchase Money, from Michaelmas 1719. till the same was fully paid; and that the said *William Elson* might be discharged from the said Doctor Clerke's Incumbrance assigned to the Appellant.

15 March

On hearing the said Petition as between *William Elson* and the Appellant, it was order'd that the Appellant should procure *William Elson*'s other Estates to be discharged from Doctor Clerke's Demand, and it was referred to the Master to compute Interest for the said 10000 *l.* from Michaelmas 1719. And out of what should be due for Interest, 500 *l.* was to be paid Mr. *Kelsall*, by the Consent of *William Elson*, towards discharging of what remained due to him for the said *Elizabeth* his Wife's Portion, and the Residue of such Interest to be paid, by the Appellant, to *William Elson*.

9 Jun. 1725.

The Appellant preferred his Petition to the now Lord Chancellor, thereby praying that such Part of the said Order of the 15th of March, whereby the Appellant was order'd to pay Interest for the Purchase Money from Michaelmas 1719. might be discharged, and that the Interest might commence only from the Time the Appellant was confirmed Purchaser, and that what should appear due for Interest, might be paid by the Respondent.

Before the said Petition was heard, an Order was made in the said Court on the 30th of June 1725. that the Appellant should, on the 7th of July then next, pay all the Interest directed to be paid, by the said Order of the 15th of March, except the half Year's Interest from Michaelmas 1719. to Lady-Day 1720. (without Prejudice to either Side, touching the said half Year's Interest). And the Appellant insists, that he, in Pursuance of the said Order on the 7th of July, did pay to Mr. *Kelsall* 500 *l.* and to *William Elson* 262 *l.* 9 *s.* 6 *d.* in full of all Interest due for the said Purchase Money, except what accrued due from Michaelmas to Lady-Day 1720.

27 July 1725.

The Appellant's Petition came on to be heard, and it was order'd, That so much of the Order of the 15th of March, whereby the Appellant was order'd to pay Interest of the Purchase Money from Michaelmas 1719. to Lady-Day 1720. should be discharged, and that the Appellant should pay Interest from the Time he was confirmed the best Purchaser only: But as to the Respondent's repaying the Appellant what he had paid for Interest as aforesaid, the Respondent producing and insisting upon the said Release, the Petition was dismissed as to the Respondent.

18 Oct. 1725.
The Appellant's Bill.

The Appellant exhibited a new Bill in the Court of Chancery against the Respondent, and thereby prayed, that the Respondent might repay the Appellant the said 762 *l.* 9 *s.* 6 *d.* with Interest and Costs, and also pay the said 50 *l.* and that the said Release as to the same, and the Respondent's indemnifying the Appellant against any further Demands of *William Elson* and his Trustees, on Account of the said Purchase,

Purchase,

Purchase, might be set aside, and that the Respondent might discharge *William Elson's* other Estates unsold, from any Demand, under Colour of the Assignment of Doctor *Clerke's* Incumbrance.

Respondent's Plea and Answer.

To this Bill the Respondent put in a Plea and Answer; and as to so much of the said Bill as sought to compel the Respondent to repay the Appellant the said Sum of 762 l. 9 s. 6 d. or to pay the said 50 l. to *Isaac Moody*, and prayed an Account or Satisfaction concerning any Matter transacted or done, or Monies pretended to be due, or payable at any Time before, and until the 6th of *August* 1724. either in respect of the Respondent's becoming the Purchaser of the said Manor of *Selfea*, or otherwise relating to any Affair in time before the said 6th of *August* 1724.; the Respondent pleaded the Matters herein before-mention'd previous to the Appellant's giving the said Release, and that all Accounts and Demands were finally settled and adjusted between him and the Appellant, on the said 6th of *August* 1724. and the Release given as aforesaid, which he set forth Verbatim.

And by Way of Answer, said, That such settling and adjusting all Matters was fairly and deliberately done, and the Appellant's Release to the Respondent, was, upon mature and valuable Considerations, executed, and the Monies truly paid to the Appellant; and that it was intended and understood between the Parties, by the said Release, to release, and discharge all Matters, Demands, and Disputes, between the Appellant and the Respondent, and in particular the said Decree was mention'd and intended to be released; and for that Purpose the Words [Decrees and Orders of the Court of Chancery] were put into the said Releases, before the same were executed, or the Respondent would not have paid such a great Sum of Money, nor executed a general Release to the Appellant; and that the Respondent believed the Appellant could not be ignorant, that the said *William Elson* intended to demand Interest for the original Purchase Money, in regard the Appellant, or his Clerk in Court, did, some time before executing the said Release, acquaint the Respondent and his Agents, That the said *William Elson* intended to apply to the Court for such Interest; and the Appellant, at the Time of executing the said Release, did assure the Respondent he should not have any more Demands made upon him by the Appellant, the said *William Elson*, or any Body else, on Account of the said Purchase; And the Appellant had greater Reason to say so, in regard the Respondent has suffer'd and lost many Thousand Pounds by Reason thereof, and the Respondent had released the Appellant from the Payment of a great many Thousand Pounds, that were really due from him to the Respondent, on other Accounts; That the Appellant knew, at the Time of executing the Release, the said 50 l. Note to *Moody* was not paid by the Respondent: And as to Doctor *Clerke's* Incumbrance, that the same ought to remain in the Respondent's Hands, to protect the Purchase from the Incumbrances of *William Elson* the Father, and *William Elson* the Son, and the rather, because *William Elson* the Son had settled this very Estate on his Marriage.

May 1726. Order on arguing the Plea.

The said Plea was argued before the Right Honourable the Lord Chancellor, who held the same to be good, and order'd it to be allowed.

Reasons against the Appeal.

From this Order the Appellant has appealed; but the Respondent humbly insists that the same is just, and agreeable to the Rules of Equity.

- I. The Respondent conceives that this Plea is well grounded, and his Answer sufficient to corroborate the same, he having already answered the material Parts of the Appellant's Bill, and in such Answer sworn that no Fraud, or Circumvention, or unfair Means were made use of to gain such Release from the Appellant; and that the same was executed voluntarily, and upon mature and valuable Considerations; and that the Appellant then assured the Respondent, That he should never have any more Demands made upon him by the Appellant, or Mr. *Elson*, or any Body else, relating to the Purchase of the Manor of *Selfea*, or to that Effect.
- II. For that on the Meeting between the Appellant and the Respondent, on the 6th of *August* 1724, all Matters and Differences between both Parties, and their Demands against each other, and particularly the Appellant's now Demand in Question, were considered, and their Securities, Papers and Vouchers produced, and the Money agreed upon was paid by the Respondent to the Appellant, and the Securities, Writings, and Vouchers on both Sides, and particularly the said Articles upon which the Decree was founded, were delivered up by the Parties to each other, and cancelled.
- III. The End of all Releases is to settle and quiet Disputes, and had the said Releases, mutually executed between the Appellant and Respondent, been only general Releases, the same would have been sufficient to have released the Appellant's Demands now in Question; but as there are contained in such Releases the Words, Decrees and Orders in Chancery, it appears from thence, that both the Decree and Orders in Chancery were under the Consideration of the Parties, and the same were inserted on purpose to release the Decree, and all Demands that might arise under it, and what was so fully and particularly express'd in such Releases, was and must be taken to be thereby absolutely discharged; and the rather in this Case where the Appellant has been a great Gainer, and the Respondent a great Loser by the said Contracts: Besides, it is not pretended that there are any other Decree or Orders of the Court of Chancery to which these Words can possibly relate, except such as are above-mentioned.
- IV. The Respondent, in Consideration of his having such Release from the Appellant, paid him a great Sum of Money, and also executed a Release to him of all the Respondent's Demands, which were very great, and so was a Purchaser for a valuable Consideration of the Release, which the Appellant seeks by his Bill to impeach.

It is therefore humbly hoped, that the said Order of the 6th of May last, shall be Affirmed, with Costs.

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From the Order the Appellant has appealed, but the Respondent denies that the same is
it, and appeals to the Rules of Equity.

William Glanville, Esq; Respondent.

The Respondent's CASE.

To be Heard at the Bar of the House
of Lords, on Friday the 15th
Day of March, 1727.

William Clatville, Esq; Respondent.

The Respondent's CASE.

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